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10/763,675

01/22/2004

Scott A. Shelstad

SHL-1

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21833 7590 04/24/2007
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3781

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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3 MONTHS

04/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/763,675

Applicant(s)

SHELSTAD, SCOTT A.

Examiner

Stephen J. Castellano

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12, 13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12, 13 and 15-23 is/are rejected.
- 7) ☒ Claim(s) 7-9, 12, 13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 11 and 14 have been canceled. Claims 1-10, 12, 13 and 15-23 are pending.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 7-9, 12, 13 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 7 states that each of the tabs is formed to receive a cross sectional shape of the enlarged rim. This was never disclosed in the specification, claims or drawings originally filed. The tabs are only capable of receiving the rim when combined with the rest of the first portion and the second portion. **This is a new matter rejection.**

Claim 12 recites that the cup includes an inner sidewall and an outer sidewall. Only one sidewall 204 is ever disclosed or drawn. Claim 12 also requires two enlarged rims since each sidewall has its own rim. **This is a new matter rejection.**

Claims 7-9, 12, 13 and 15 are objected to because the claimed structure has not been shown in a drawing.

Claims 7-9, 12, 13 and 15 will not be treated with an art rejection since their metes and bounds can't be determined, their scope is indeterminate.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Macaluso, Jr. et al. (3,399,780) (Macaluso).

Macaluso discloses an apparatus in combination with a cup, the apparatus assists in identifying the cup, the cup having an opening defined by an enlarged, annular peripheral rim, the apparatus comprising a body including an attachment portion (20, 22, 24 – the upper inverted U shaped portions which attach to the peripheral rim).

Re rim curvature, the curvature of a rim can extend around an opening in two different directions; (1) a circumferential direction and (2) a direction starting on the interior surface of the cup and extending radially outwardly to end on an exterior surface of the cup. Claim 1, 20 and 21 never specify a circumferential direction for the rim curvature. Since the claim is broad enough to interpret the direction of rim curvature to be radially outwardly as shown by Macaluso, these claims continue to be anticipated.

Re claims 6-9, 20 and 23, the tab is either the interior or exterior portion of one of the inverted U-shaped portions, the tab includes a protrusion at a distal end (at least one of the ribs 22 or lugs 24), the lugs 24 and the outer and inner ribs 22 (shown in cross section in Fig. 5) are arcuate in shape, and both of the ribs 22 are angular in shape.

Re claim 11, the inverted U shape of the attachment portion is curved to approximately conform to the rim curvature.

Re claims 12-14, 20 and 23, the identification portion is the arm 18; the identification portion is disposed adjacent to the sidewall. Re claim 16, the identification portion is customizable.

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Re claim 17, the attachment portion is configured for engaging the rim without application of a continuous, resilient biasing force to the rim.

Re claims 21-23, the method of use is disclosed wherein the attaching step is performed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macaluso.

Macaluso discloses the invention except for the flexing of the rim of the cup. The Official notice taken in the last Office action that plastic and paper cups with enlarged, annular peripheral rims which flex are well known is now being treated as a prior art admission. It would have been obvious to modify the cup to be plastic or paper as these materials are readily available, relatively inexpensive, and do not shatter or break when dropped.

Claims 1-6, 10 and 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macaluso in view of Fischer et al. (Fischer) and Myers, Jr. (Myers).

Macaluso discloses the invention except for the curvature of the attachment portion extending in a circumferential direction around the opening to approximately conform with the rim curvature in a circumferential direction. Fischer discloses a brush bucket which is supported with an attachment portion, the attachment portion has two parts both of which are arcuate to approximately conform to the circumferential curvature of an upper rim of a paint bucket. Myers similarly discloses a paint bucket with an attachment portion with an arcuate curvature to approximately conform to the circumferential curvature of an upper rim of a paint bucket. It

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would have been obvious to modify the two attachment portions of Macaluso to be arcuate in a circumferential direction to conform better than flat portions or portions not curved in the circumferential direction as motivated by the better fit and easier operation.

Re claim 3, the entrance opening would be arcuate after the above modification.

Applicant's arguments filed March 26, 2007 have been fully considered but they are not persuasive. Applicant states that the gripping elements appear to be rigid (see page 11, paragraph 3, third sentence). However, Macaluso's gripping elements are resilient (i.e., flexible) (see col. 2, line 57 of Macaluso). Applicant is incorrect in assuming that rigid elements are precluded from being flexible.

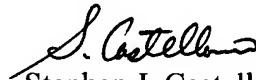
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc